

Order

Entered: July 29, 2003

ADM File No. 2002-29

Proposed Michigan Standards for
Imposing Lawyer Sanctions

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

CORRECTED ORDER

In *Grievance Administrator v Lopatin*, 462 Mich 235, 238 n 1 (2000), the Court adopted the American Bar Association Standards for Imposing Lawyer Sanctions on an interim basis. At the same time, the Court directed the Attorney Discipline Board to explore the development of permanent Michigan standards for imposing lawyer sanctions. The ADB did as requested and has submitted proposed standards. The Court is considering the implementation of a modified version of those standards. In some instances, alternative language is presented. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all. In addition, this matter will be considered at a public hearing before the Court makes a final decision. The schedules and agendas for public hearings are posted on the Court's website, www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by November 1, 2003, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2002-29. Your comments will be posted along with the comments of others at www.courts.michigan.gov/supremecourt/resources/administrative/index.htm.

Young, J., states:

"Following the publication of my statement accompanying our order dated, July 15, 2003, the ADB reminded this Court that it did not omit to propose standards regarding the subject of lawyer incompetence, but rather recommended the adoption of provisions that specifically address this troubling issue. Accordingly, I support the inclusion in the corrected order of the ADB's proposed standards on incompetence. I hope that consideration of these proposals will raise awareness and spark a spirited debate on the question of not *whether* the organized Bar will self-police its incompetent members, but of *how* it should do so."

Taylor, J., joins the statement of Young, J.

PROPOSED MICHIGAN STANDARDS FOR IMPOSING LAWYER SANCTIONS

Preface

These Michigan Standards for Imposing Lawyer Sanctions were adopted by the Michigan Supreme Court on [date], and are intended for use by the Attorney Discipline Board and its hearing panels in imposing discipline following a finding or acknowledgment of professional misconduct. These standards may be amended or modified only by the Court.

Definitions: The definitions contained in the Commentary to Rule 1.0 of the Michigan Rules of Professional Conduct (MRPC) and in Michigan Court Rule (MCR) 9.101 are incorporated by reference.

“Intent” is the conscious objective or purpose to accomplish a particular result.

“Negligence” is the failure of a lawyer to exercise the degree of care that a reasonable lawyer would exercise in the situation.

A. PURPOSE AND NATURE OF SANCTIONS

1.1 Purpose of Lawyer Discipline Proceedings: The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.

1.2 Public Nature of Lawyer Discipline: Ultimate disposition of lawyer discipline should be public in cases of disbarment, suspension, and reprimand. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should private discipline be imposed.

1.3 Purpose of These Standards: These standards are designed for use in imposing a sanction or sanctions following the entry of a finding of misconduct pursuant to MCR 9.115(J)(1). These Standards are designed to promote fairness, predictability, and continuity in the imposition of sanctions. They are also designed to provide a focus for appellate challenges concerning the appropriate level of discipline imposed upon a lawyer.

B. SANCTIONS AND OTHER CONSEQUENCES FOR MISCONDUCT

2.1 Scope: A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgment that the lawyer has engaged in professional misconduct.

2.2 Disbarment: Disbarment means revocation of the license to practice law. An attorney whose license to practice law has been revoked may petition for reinstatement under MCR 9.124, but may not do so until at least 5 years have elapsed since revocation of the license. Eligibility for reinstatement is determined under MCR 9.123, which

requires a disbarred attorney to establish by clear and convincing evidence the elements of MCR 9.123(B) and requires recertification by the Board of Law Examiners.

2.3 Suspension: Suspension is the removal of a lawyer from the practice of law for not less than 30 days. See MCR 9.106(2). An attorney suspended for 180 days or more is not eligible for reinstatement until the attorney has petitioned for reinstatement under MCR 9.124, has established by clear and convincing evidence the elements of MCR 9.123(B), and has complied with other applicable provisions of MCR 9.123.

2.4 Interim Suspension: Interim suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. Interim suspension includes:

- (a) automatic suspension upon conviction of a felony (MCR 9.120[B]) or,
- (b) suspension of a lawyer who fails to comply with the lawful order of a hearing panel, the Board, or the Supreme Court (MCR 9.127[A]).

2.5 Reprimand: Reprimand is a form of public discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

2.6 Admonition: Admonition, also known as private reprimand, is a form of nonpublic discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

2.7 Probation: Probation is a sanction that may be imposed upon an impaired lawyer as set forth in MCR 9.121(C).

2.8 Other Sanctions and Remedies: Other sanctions and remedies that may be imposed include:

- (a) restitution;
- (b) transfer of an incompetent or incapacitated attorney to inactive status (MCR 9.121[A] and [B]);¹ or
- (c) such conditions relevant to the established misconduct as a hearing panel, the Board, or the Supreme Court deems consistent with the purposes of lawyer sanctions.

2.9 Reciprocal Discipline: Reciprocal discipline is the imposition of a disciplinary sanction on a lawyer who has been disciplined in another jurisdiction. The only issues to be addressed in the Michigan proceeding are whether the respondent was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate. MCR 9.104(B).

C. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS

¹ An attorney may be ordered transferred to inactive status under MCR 9.121(A) and (B) without a finding of misconduct.

3.0 Generally: In imposing a sanction after a finding or acknowledgment of lawyer misconduct, the Board and hearing panels should consider the following factors:

- (a) the nature of the misconduct;
- (b) the lawyer's mental state;
- (c) the circumstances of the misconduct, including the existence of aggravating or mitigating factors; and
- (d) the precedent of the Court and the Board.

3.1 Application of Standards: In considering the foregoing factors and applying these standards, hearing panels, the Board, and others should:

- (a) Consult Appendix 1 (Cross-Reference Table: Michigan Rules of Professional Conduct and Standards for Imposing Lawyer Sanctions) and locate the rule violated and a reference to the pertinent standard in Section D;
- (b) determine which of the factors present in the pertinent standard apply, and select the appropriate recommended sanction;
- (c) consider whether the recommendation adequately addresses the nature or effects of the misconduct, and articulate any basis for selecting an alternative sanction as a baseline;
- (d) refer to the commentary and precedent to refine the recommendation; and
- (e) consider aggravating and mitigating factors (see Section E).

D. RECOMMENDED SANCTIONS

The recommended sanctions in the following standards take into account the factors set forth in Standard 3.0 and are generally appropriate for the types of misconduct specified, absent aggravating or mitigating circumstances.

4.0 Violations of Duties Owed to Clients

4.1 Failure to Preserve Property held in Trust: The following sanctions are generally appropriate in cases involving the failure to preserve property held in trust in violation of MRPC 1.15:

4.11 Disbarment is generally appropriate when a lawyer knowingly fails to preserve property held in trust.

4.12 Suspension is generally appropriate when a lawyer fails to hold property in trust or commingles personal property with property that should have been held in trust.

4.13 Reprimand is generally appropriate when a lawyer, in an isolated instance, negligently fails to preserve property held in trust.

4.2 Failure to Preserve the Client's Confidences: The following sanctions are generally appropriate in cases involving improper revelation of information in violation of MRPC 1.6 and 1.9(c):

4.21 Disbarment is generally appropriate when a lawyer, in a scheme to benefit the lawyer or another, knowingly reveals information protected under MRPC 1.6 or 1.9(c).

4.22 Suspension is generally appropriate when a lawyer knowingly reveals information protected under MRPC 1.6 or 1.9(c), where the revelation is not part of a scheme to benefit the lawyer or another.

4.23 Reprimand is generally appropriate when a lawyer fails to use reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using the confidences or secrets of a client.

4.3 Failure to Avoid Conflicts of Interest: The following sanctions are generally appropriate in cases involving conflicts of interest in violation of MRPC 1.7, 1.8, 1.9(a) or (b), 1.10, 1.11, 1.12, 1.13, 5.4(c), or 6.3.

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of the client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's in order to obtain a benefit or advantage for the lawyer or another; or
- (b) simultaneously represents clients that the lawyer knows have adverse interests in order to obtain a benefit or advantage for the lawyer or another; or
- (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client in order to obtain a benefit or advantage for the lawyer or another; or
- (d) engages in a transaction described in MRPC 1.8(a) with a client wherein the lawyer deceives the client into believing that the transaction and the terms on which the lawyer acquires the interest are fair and reasonable to the client, when the lawyer knows that the transaction and terms are unfair and unreasonable.

4.32 Suspension is generally appropriate when:

- (a) a lawyer knows of a conflict of interest and does not seek to obtain consent from the present or former client after consultation; or
- (b) a lawyer knowingly violates MRPC 1.8(c)-(j).

4.33 Reprimand is generally appropriate when a lawyer engages in a conflict of interest in violation of MRPC 1.7, 1.8, or 1.9(a) and (b), but does not knowingly violate the rule(s).

ALTERNATIVE A TO PROPOSED STANDARDS 4.4 AND 4.5

4.4 Lack of Diligence

The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice of law ~~and causes serious or potentially serious injury to a client~~; or
- (b) a lawyer knowingly fails to perform services for a client ~~and causes serious or potentially serious injury to a client~~; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters ~~and causes serious or potentially serious injury to a client~~.

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client ~~and causes injury or potential injury to a client~~; or
- (b) a lawyer engages in a pattern of neglect ~~and causes injury or potential injury to a client~~.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, ~~and causes injury or potential injury to a client~~.

4.5 Lack of Competence

The following sanctions are generally appropriate in cases involving failure to provide competent representation to a client:

4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, ~~and the lawyer's conduct causes injury or potential injury to a client~~.

4.52 Suspension is generally appropriate when a lawyer knowingly fails to provide competent representation, ~~and causes injury or potential injury to a client~~.

4.53 Reprimand is generally appropriate when a lawyer:

- (a) demonstrates failure to understand relevant legal doctrines or procedures ~~and causes injury or potential injury to a client~~; or
- (b) negligently fails to provide competent representation ~~and causes injury or potential injury to a client~~.

[Note that Alternative A, above, is the ADB's original proposal concerning lawyer incompetence, with changes agreed upon by the Court indicated by strikeouts (that language will be deleted if the Court decides to enter an amended order).]

ALTERNATIVE B TO PROPOSED STANDARDS 4.4 AND 4.5

4.4 Lack of Diligence: The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.1(a)-(c), 1.2(a) or (b), 1.3, or 1.4:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice of law; or
- (b) a lawyer knowingly fails to perform services for a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters.

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client in a reasonably diligent and prompt manner; or
- (b) a lawyer engages in a pattern of neglect; or
- (c) a lawyer handles a matter that the lawyer knows or should know that the lawyer is not competent to handle.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client or handles a matter without preparation adequate under the circumstances.

4.5 Charging Illegal or Clearly Excessive Fees: The following sanctions are generally appropriate in cases involving the charging of an illegal or clearly excessive fee in violation of MRPC 1.5:

4.51 Disbarment is not generally appropriate when a lawyer charges or collects a clearly excessive fee absent the presence of significant factors in aggravation.

4.52 Suspension is generally appropriate when a lawyer knowingly charges or collects a clearly excessive fee.

4.53 Reprimand is generally appropriate when a lawyer negligently charges or collects a clearly excessive fee.

4.6 Lack of Candor: The following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client in violation of MCR 9.104(A)(2) or (3) or MRPC 8.4(b).

4.61 Disbarment is generally appropriate when a lawyer deceives a client to obtain a benefit or advantage for the lawyer or another.

4.62 Suspension is generally appropriate when a lawyer deceives a client, and the deception reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law, but is not done to obtain a benefit or advantage for the lawyer or another.

ALTERNATIVE A TO PROPOSED STANDARD 4.63

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information.

ALTERNATIVE B TO PROPOSED STANDARD 4.63

4.63 Reprimand is generally *not* appropriate when a lawyer engages in fraud, deceit or misrepresentation toward a client.

5.0 Violations of Duties Owed to the Public

5.1 Failure to Maintain Personal Integrity: The following sanctions are generally appropriate in cases involving conduct in violation of MCR 9.104(A)(5) or MRPC 3.5(c), 4.1, 6.5, or 8.4(b).

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct, a necessary element of which includes: intentional interference with the administration of justice, false swearing, intentional misrepresentation, fraud, extortion, misappropriation, or theft; the sale, distribution or importation of controlled substances; the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other conduct involving dishonesty, fraud, deceit, or misrepresentation that is a seriously adverse reflection on the lawyer's fitness to practice; or
- (c) a lawyer knowingly mistreats a person involved in the legal process because of the person's race, gender, or other protected personal characteristic in order to gain an advantage in the litigation for the lawyer or another; or
- (d) a lawyer knowingly engages in conduct that is discourteous and disrespectful toward a tribunal in order to gain an advantage in the litigation for the lawyer or another.

5.12 Suspension is generally appropriate when:

- (a) a lawyer engages in criminal conduct that does not contain the elements listed in Standard 5.11 but that nevertheless adversely reflects on the lawyer's fitness to practice; or
- (b) a lawyer engages in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice; or
- (c) a lawyer knowingly mistreats a person involved in the legal process because of the person's race, gender, or other protected personal characteristic without the purpose of gaining an advantage in the litigation for the lawyer or another; or
- (d) a lawyer knowingly engages in conduct that is discourteous and disrespectful toward a tribunal without the purpose of gaining an advantage in the litigation for the lawyer or another.

ALTERNATIVE A TO PROPOSED STANDARD 5.13

5.13 Reprimand is generally appropriate when a lawyer engages in criminal conduct that does not contain the elements listed in Standard 5.11.

ALTERNATIVE B TO PROPOSED STANDARD 5.13

5.13 Reprimand is generally appropriate when:

- (a) a lawyer engages in criminal conduct that does not contain the elements listed in Standard 5.11 and that reflects adversely on the lawyer's fitness to practice; or
- (b) a lawyer engages in any conduct that involves dishonesty, fraud, deceit, or knowing misrepresentation and that adversely reflects on the lawyer's fitness to practice law to a slight degree; or
- (c) a lawyer engages in an isolated instance of simple negligence in dealing with the property of another entrusted to the lawyer and causes little or no injury or potential injury.

5.2 Failure to Maintain the Public Trust: The following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official in violation of MCR 9.104(A)(1), MRPC 3.8, 6.4, or 8.4(c) or (d).

5.21 Disbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position or either states or implies that the lawyer may improperly influence another in an official or

governmental position to obtain a benefit or advantage for the lawyer or another.

5.22 Suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, resulting in prejudice to the administration of justice.

5.23 Reprimand is generally appropriate when:

- (a) a lawyer in an official or governmental position negligently fails to follow proper procedures or rules (with the exception of the duties set forth in MRPC 6.4, which cannot be violated by simple negligence), resulting in prejudice to the administration of justice; or
- (b) a prosecutor or assistant prosecutor violates the duties set forth in MRPC 3.8(a)-(e) and the violation does not result in prejudice to the administration of justice.

6.0 Violations of Duties Owed to the Legal System

6.1 False Statements, Fraud, and Misrepresentation to a Tribunal: The following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a tribunal in violation of MRPC 3.3:

6.11 Disbarment is generally appropriate when a lawyer knowingly makes a false statement, submits a false document, or improperly fails to disclose a material fact or adverse controlling authority, known to the lawyer and not disclosed by opposing counsel, to obtain a benefit or advantage for the lawyer or another.

6.12 Suspension is generally appropriate when:

- (a) a lawyer engages in the conduct described in Standard 6.11 but does not do so to obtain a benefit or advantage for the lawyer or another; or
- (b) a lawyer comes to know of the falsity of material evidence the lawyer has offered to a tribunal but fails to take reasonable remedial measures.

ALTERNATIVE A TO PROPOSED STANDARD 6.13

6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents submitted to a tribunal are false or in taking remedial action when material information is being withheld.

ALTERNATIVE B TO PROPOSED STANDARD 6.13

6.13 Reprimand is generally *not* appropriate when a lawyer engages in false statements, fraud, and misrepresentation to a tribunal.

6.2 Abuse of the Legal Process: The following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists, in violation of MCR 9.104(A)(1), MRPC 3.1, 3.2, 3.4, 3.6, 4.4, or 8.4(c).

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule to obtain a benefit or advantage for the lawyer or another, or violates MRPC 3.4(a) or (b).

6.22 Suspension is generally appropriate when:

- (a) a lawyer knowingly violates a court order or rule without the intent to obtain a benefit or advantage for the lawyer or another but resulting in prejudice to the administration of justice; or
- (b) a lawyer knowingly brings or defends a matter without a basis that is not frivolous; or
- (c) a lawyer knowingly fails to expedite litigation consistent with the interests of the client.

6.23 Reprimand is generally appropriate when:

- (a) a lawyer violates MRPC 3.4(d)-(f) or 3.6; or
- (b) a lawyer negligently brings or defends a matter without a basis that is not frivolous; or
- (c) a lawyer negligently fails to expedite litigation consistent with the interests of the client.

6.3 Improper Communications with Individuals In the Legal System: The following sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror, or other official by means prohibited by law or in violation of MRPC 3.5(a) or (b), 4.2, or 4.3:

6.31 Disbarment is generally appropriate when a lawyer:

- (a) intentionally tampers with a witness in an attempt to interfere with the outcome of the legal proceeding; or
- (b) makes an ex parte communication with a judge or juror in an attempt to affect the outcome of the proceeding; or
- (c) improperly communicates with someone in the legal system other than a witness, judge, or juror in an attempt to influence or affect the outcome of the proceeding.

6.32 Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper.

6.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system.

7.0 Violations of Other Duties Owed as a Professional: The following sanctions are generally appropriate in cases involving conduct in violation of MRPC 1.14, 1.16, 2.1, 2.3, 5.1 - 5.6, 6.2, 7.1 - 7.5, 8.1, 8.3, or 8.4(e).

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional to obtain a benefit or advantage for the lawyer or another.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional but does not do so in order to obtain a benefit or advantage for the lawyer or another.

7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional.

8.0 Practice of Law in Violation of an Order of Discipline: The following sanctions are generally appropriate in cases involving the practice of law in violation of an order of discipline.

8.1 Disbarment is generally appropriate when a lawyer intentionally practices law in violation of the terms of a disciplinary order.

8.2 Generally, the same discipline imposed by the original disciplinary order should be consecutively imposed when a lawyer practices law in violation of the terms of a disciplinary order, but does not engage in such conduct knowingly.

ALTERNATIVE A TO PROPOSED STANDARD 8.3

8.3 Reprimand is generally *not* appropriate when a lawyer practices law in violation of the terms of a disciplinary order.

ALTERNATIVE B TO PROPOSED STANDARD 8.3

8.3 Reprimand is generally appropriate when a lawyer negligently practices law in violation of the terms of a disciplinary order.

E. AGGRAVATION AND MITIGATION

9.1 Generally: After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

9.2 Aggravation

9.21 Definition: Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors that may be considered in aggravation include:

- (a) degree of harm to a client, opposing party, the bar, bench, or public;
- (b) prior disciplinary offenses;
- (c) dishonest or selfish motive;
- (d) a pattern of misconduct;
- (e) multiple offenses;
- (f) obstruction of the disciplinary proceeding by knowingly failing to comply with rules or orders of the disciplinary agency;
- (g) submission of false evidence or statements, or other deceptive practices, during the disciplinary process;
- (h) refusal to acknowledge wrongful nature of conduct;
- (i) vulnerability of victim;
- (j) substantial experience in the practice of law;
- (k) indifference to making restitution; and
- (l) illegal conduct, including that involving the use of controlled substances.

9.3 Mitigation

9.31 Definition: Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Factors that may be considered in mitigation include:

- (a) absence of any degree of harm to a client, opposing party, the bar, bench, or public;
- (b) absence of a prior disciplinary record;
- (c) absence of a dishonest or selfish motive;
- (d) serious personal or emotional problems that contributed to the misconduct;
- (e) timely good-faith effort to make restitution or to rectify consequences of misconduct;

- (f) full and free disclosure to disciplinary board or cooperative attitude toward the proceedings;
- (g) inexperience in the practice of law;
- (h) character or reputation;
- (i) physical disability that contributed to the misconduct;
- (j) mental disability or chemical dependency, including alcoholism or drug abuse, when:
 - (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
 - (2) the chemical dependency or mental disability contributed to the misconduct;
 - (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
 - (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
- (k) delay in disciplinary proceedings;
- (l) imposition of other penalties or sanctions; and
- (m) remorse.

9.4 Factors that are Neither Aggravating nor Mitigating: The following factors should not be considered as either aggravating or mitigating:

- (a) forced or compelled restitution;
- (b) agreeing to the client's demand for certain improper behavior or result;
- (c) withdrawal of complaint against the lawyer;
- (d) resignation before completion of disciplinary proceedings;
- (e) complainant's recommendation as to sanction; and
- (f) failure of injured client to complain.

APPENDIX Michigan Standards for Imposing Lawyer Sanctions
Cross-Reference Table

Michigan Rules of Professional Conduct	Standards for Imposing Lawyer Sanctions
Competence/Neglect Rule 1.1, 1.1(a)(b) and (c)	Standard 4.4
Scope of Representation Rule 1.2(a), (b) Rule 1.2(c)	Standard 4.4 Standards 5.1, 6.1
Diligence Rule 1.3	Standard 4.4
Communication Rule 1.4	Standard 4.4
Fees Rule 1.5	Standards 4.5
Confidentiality of Information Rule 1.6	Standard 4.2
Conflict of Interest Rule 1.7	Standard 4.3
Prohibited Transactions Rule 1.8	Standard 4.3
Former Client Rule 1.9(a) and (b) Rule 1.9(c)	Standard 4.3 Standard 4.2
Imputed Disqualification Rule 1.10	Standard 4.3
Successive Government and Private Employment Rule 1.11	Standard 4.3
Former Judge or Arbitrator Rule 1.12	Standard 4.3
Organization as Client Rule 1.13	Standard 4.3
Disabled Client Rule 1.14	Standard 7.0
Safekeeping Property Rule 1.15(a), (b), (c)	Standard 4.1

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Cross-Reference Table

Michigan Rules of Professional Conduct	Standards for Imposing Lawyer Sanctions
Declining or Terminating Representation Rule 1.16	Standard 7.0
Advisor Rule 2.1	Standard 7.0
Intermediary Rule 2.2	Standard 4.3
Evaluation for Use by Third Persons Rule 2.3	Standard 7.0
Meritorious Claims and Contentions Rule 3.1	Standard 6.2
Expediting Litigation Rule 3.2	Standard 6.2
Candor Toward the Tribunal Rule 3.3	Standard 6.1
Fairness to Opposing Party and Counsel Rule 3.4	Standard 6.2
Impartiality and Decorum Rule 3.5(a) and (b) Rule 3.5(c)	Standard 6.3 Standard 5.1
Trial Publicity Rule 3.6	Standard 6.2
Lawyer as Witness Rule 3.7	Standard 4.3
Special Responsibilities of a Prosecutor Rule 3.8	Standard 5.2
Advocate in Nonadjudicative Proceedings Rule 3.9	Standard 6.2
Truthfulness to Others Rule 4.1	Standard 5.1

APPENDIX Michigan Standards for Imposing Lawyer Sanctions

Cross-Reference Table

Michigan Rules of Professional Conduct

Standards for Imposing Lawyer Sanctions

Communication with Represented Persons Rule 4.2	Standard 6.3
Dealing with Unrepresented Persons Rule 4.3	Standard 6.3
Respect for Rights of Third Persons Rule 4.4	Standard 6.2
Responsibilities of a Partner or Supervisory Lawyer Rule 5.1	Standard 7.0
Responsibilities of a Subordinate Lawyer Rule 5.2	Standard 7.0
Responsibilities Regarding Non-lawyer Assistants Rule 5.3	Standard 7.0
Professional Independence of Lawyer Rule 5.4(a), (b), and (d) Rule 5.4(c)	Standard 7.0 Standard 4.3
Unauthorized Practice of Law Rule 5.5	Standard 7.0
Restrictions on Right to Practice Rule 5.6	Standard 7.0
Pro Bono Public Service Rule 6.1	No Applicable Standard
Accepting Appointments Rule 6.2	Standard 7.0
Membership in Legal Services Organization Rule 6.3	Standard 4.3
Law Reform Activities Affecting Client Interests Rule 6.4	Standard 5.2
Professional Conduct Rule 6.5	Standard 5.1

APPENDIX Michigan Standards for Imposing Lawyer Sanctions
Cross-Reference Table

**Michigan Rules of Professional
Conduct**

**Standards for Imposing Lawyer
Sanctions**

Communication Concerning Lawyer's Services Rule 7.1	Standard 7.0
Advertising Rule 7.2	Standard 7.0
Direct Contact with Prospective Clients Rule 7.3	Standard 7.0
Communication of Fields of Practice Rule 7.4	Standard 7.0
Firm Names and Letterheads Rule 7.5	Standard 7.0
Bar Admission and Disciplinary Matters Rule 8.1	Standards 5.1, 7.0
Judges and Legal Officials Rule 8.2	Standard 5.1
Reporting Professional Misconduct Rule 8.3	Standard 7.0
Misconduct Rule 8.4(a) Rule 8.4(b); MCR 9.104(A)(2)(3)&(5) Rule 8.4(c); MCR 9.104(A)(1) Rule 8.4(d) Rule 8.4(e)	Standards 4.0, 5.0, 6.0, 7.0 Standards 4.6, 5.1 Standards 5.2, 6.2 Standard 5.2 Standard 7.0
Jurisdiction Rule 8.5	None



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

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July 29, 2003

Angela Z. Meyer
Clerk